IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PROJECT MANAGEMENT INSTITUTE, INC. et al. Plaintiffs,	:	
	:	CIVIL ACTION
v.	:	NO. 03-1712
	:	
LEWIS R. IRELAND et al. Defendants.	:	

MEMORANDUM and ORDER

YOHN, J. December _____, 2003

Plaintiffs, Project Management Institute, Inc. ("PMI"), Harold Reeve and Hugh Woodward, bring this suit against defendants, Lewis R. Ireland and Lew Ireland & Associates, Inc. ("Ireland, Inc."), alleging violation of the settlement agreement and consent decree from the parties' previous action before this court (count I), wrongful use of civil proceedings in violation of 42 PA. CONS. STAT. § 8351 et seq. (count II), and abuse of process (count III). Defendant Ireland also brings a counterclaim, alleging "aggressive and unlawful actions intended to do harm and materially affect [defendant]'s reputation as well as his ability to earn a living for himself and his family." Counterclaim 1. Defendant Ireland's counterclaim has been dismissed in a separate order.

Presently before this court is plaintiffs' motion for partial summary judgment. More specifically, plaintiffs seek summary judgment on liability for all counts, but leave judgment on damages and potential punishment or penalty for defendants to be decided at trial. The court has considered plaintiffs' motion for summary judgment and brief in support thereof, defendant Ireland's response thereto and brief in support of his opposition, and Ireland's addendum to his

response. For the reasons set forth below, I will grant plaintiffs' motion for summary judgment on liability for count I against defendant Ireland, but will deny their motion for summary judgment on liability for counts II and III.

BACKGROUND

This is the fourth time these parties are before this court, now addressing substantially the same issues that have previously been before the court. The original case was filed on October 1, 1999 by the current plaintiffs against the current defendants, alleging defamation, breach of contract, tortious interference with existing contracts, intentional infliction of emotional distress and negligence. On April 11, 2000 the parties reached a settlement agreement, which was entered as a consent decree by this court on May 23, 2000. The portion of the consent decree at issue in the instant case is defendants' release and discharge of plaintiffs "from any and all claims, liabilities, demands and causes of action known or unknown, fixed or contingent, which they may have or claim to have against plaintiffs . . . arising from or relating to the subject matter of the lawsuit." Consent Decree 5. Defendant Ireland filed a lawsuit in the District of Colorado on October 1, 2001.[1] That court dismissed the case on March 26, 2002, following the January 24, 2002 recommendation of a magistrate judge. The court concluded that (1) it did not have jurisdiction to hear the case, and (2) even if it allowed Ireland to cure the jurisdictional

[1] Defendant Ireland, Inc. was not a party to the suit filed in Colorado. *See* Pl. Exs. G-I. Plaintiffs do not explain how defendant Ireland, Inc. could be responsible for the initiation of proceedings by defendant Lewis Ireland. Although defendant Ireland, Inc. has not filed a motion for summary judgment on all claims against it, and hence, has not been officially dismissed from this suit, this memorandum and order will only deal with defendant Lewis Ireland individually.

deficiency, the May 23, 2000 consent decree of this court barred the suit.[2] After the magistrate judge issued his recommendation, but before the court issued its final decision, Ireland filed a motion to dismiss the original action in this court, which this court interpreted as an action for relief from judgment under FED. R. CIV. P. 60(b). Ireland's motion was denied, which means that the May 23, 2000 consent decree remained (and still does remain) in effect. Plaintiffs filed the instant action on March 21, 2003. On June 9, 2003, Ireland again attempted to reopen the original case, filing a motion for summary judgment or new hearing. This motion was dismissed on July 18, 2003.

STANDARD OF REVIEW

Either party to a lawsuit may file a motion for summary judgment, and the court will grant it "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." *Ideal Dairy Farms, Inc. v. John Lebatt, LTD.*, 90 F.3d 737, 743 (3d Cir. 1996) (citation omitted). When a court evaluates a motion for summary judgment, "[t]he

[2] The Colorado district court found that the consent decree barred the Colorado action because "[t]he allegations [in the Colorado suit] clearly involve the same issues as the Pennsylvania action, and arise from or relate to the subject matter of that lawsuit." Pl. Ex. I at 4. It does appear, however, that some of the claims asserted in the Colorado action were based on events that took place after the consent decree was entered on May 23, 2000. There is no need to address this discrepancy here, though, because the vast majority of the claims asserted by Ireland in the Colorado action appear to violate the consent decree. These claims are the focus of the instant action.

evidence of the non-movant is to be believed," *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986), and "all justifiable inferences are to be drawn in [the non-movant's] favor." *Id*. Additionally, "[s]ummary judgment may not be granted . . . if there is a disagreement over what inferences can be reasonably drawn from the facts even if the facts are undisputed." *Ideal Dairy*, 90 F.3d at 744 (citation omitted). However, "an inference based upon a speculation or conjecture does not create a material factual dispute sufficient to defeat entry of summary judgment." *Robertson v. Allied Signal, Inc.*, 914 F.2d 360, 382 n.12 (3d Cir. 1990).

To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). Similarly, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. *Williams v. Borough of W. Chester*, 891 F.2d 458, 460 (3d Cir.1989) (citing *Celotex v. Catrett*, 477 U.S. 317, 325 (1986)). Further, the non-moving party has the burden of producing evidence to establish prima facie each element of his claim. *Celotex*, 477 U.S. at 322-23. The non-movant must show more than "[t]he mere existence of a scintilla of evidence" for elements on which he bears the burden of production. *Anderson*, 477 U.S. at 252. Thus, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citations omitted).

DISCUSSION

I. Count I – Violation of the Consent Decree

Plaintiffs provide two different, but similar legal arguments in support of their motion for

summary judgment on liability for defendant Ireland's failure to abide by the terms of the consent decree entered May 23, 2000. Plaintiffs argue that defendant's initiation of a suit against plaintiffs in the District of Colorado on October 1, 2001 violated the May 23, 2000 consent decree of this court and that defendant should therefore be liable for civil contempt or, in the alternative, breach of contract. Count I of plaintiffs' complaint is clearly for civil contempt (although not explicitly stated), as opposed to breach of contract. It appears plaintiffs include the breach of contract argument in their motion for summary judgment in case the court does not find its civil contempt argument convincing.[3] Since I will grant summary judgment on plaintiffs' claim for civil contempt, I need not address the breach of contract claim.

The Third Circuit has made clear that "[t]o prove civil contempt the court must find that (1) a valid court order existed, (2) the defendant had knowledge of the order, and (3) the defendant disobeyed the order. *Harris v. City of Philadelphia*, 47 F.3d 1311, 1326 (3d Cir. 1995) (citation omitted). Although Ireland argues that a valid order did not exist, Def. Resp. to Pl.'s Mot. for Partial Summ. J. 6, he provides no evidence that this court's May 23, 2000 consent decree was invalid. In fact, this court has previously rejected defendant's arguments to this effect. Defendant filed a motion for relief from judgment under FED. R. CIV. P. 60(b) on March

[3] A claim for breach of contract does not allow for some of the types of remedies plaintiffs seek, i.e. punitive damages. *See Axcan Scandipharm, Inc. v. American Home Products*, 2003 WL 21731124, at *4 (Pa. Com. Pl. 2003) ("Punitive damages are not available for a mere breach of contract.") (citing *Baker v. Pennsylvania Nat'l Mut. Cas. Ins. Co.*, 536 A.2d 1357, 1367 (Pa. Super. 1987), *aff'd* 522 Pa. 80, 559 A.2d 914 (1989)); *Williams v. Katawczik*, 53 Pa. D. & C.4th 558, 568 (Pa. Com. Pl. 2001) ("Claims for punitive damages are dismissed because Pennsylvania does not award punitive damages for a bad faith breach of contract.") (citing *Johnson v. Hyundai Motor Am.*, 698 A.2d 631, 639 (Pa. Super. 1997)). Hence, it is clear that plaintiffs intend their breach of contract argument to be considered only in the event that their civil contempt claim fails.

18, 2002, arguing: (1) he was not mentally competent to enter into the settlement agreement because he was "overmedicated;" (2) the text of the agreement had been altered from what he negotiated; (3) PMI already violated the confidentiality clause of the agreement; and (4) the initiation of the suit by plaintiff Reeve was in violation of PMI's own regulations. *See* Order of July 18, 2002. These claims were dismissed without prejudice. *See id.*; Order of August 16, 2002. Ireland also filed a motion for summary judgment or new hearing on June 9, 2003, again arguing that he was not competent to enter into the settlement agreement. Defendant additionally complained of deficiencies in the hearing that resulted in the court's August 16, 2002 decision. This motion was denied on July 18, 2003. *See* Order of July 18, 2003. The court noted in that order that "[t]his litigation ended three years ago by the agreement of the parties. The present issue [as to Ireland's mental state] has also been previously litigated. It is time for the defendant[] . . . to move on." In other words, the court made it abundantly clear that the settlement agreement and resulting consent decree were valid and enforceable. Ireland has only offered the allegations and arguments previously dismissed by this court, and has failed to show that there is a genuine issue of material fact regarding the validity of the consent decree. Hence, the first prong of the three-part test for a finding of civil contempt is established.

Ireland clearly knew of the order. First, plaintiffs filed a petition to find Ireland in contempt of court and/or to enforce the consent decree on September 1, 2000, and the court held a hearing on this petition. After defendant agreed to comply with the consent decree, plaintiffs asked this court to consider their request for contempt sanctions. The court responded:

> Let's - - let's see how quickly he complies with this, before I make a ruling on that [the request for contempt sanctions]. What I will do is, I will continue this hearing until next Friday and assuming that everything gets done as has been

> promised, then I will dismiss the petition as moot; if it doesn't get done as promised, then we'll be back here next Friday and I'll consider what other remedies, including counsel fees and fines and jail terms and things like that. All right.

Defendant cannot claim, after being threatened with sanctions for failure to abide by the consent decree, that when he filed his suit in Colorado a year later he did not know about the consent decree.

In fact, Ireland referenced the initial suit in his complaint filed in the District of Colorado. *See* Colo. Compl. ¶¶ 33-34. Defendant does not now deny that he knew of the order when he filed his action in Colorado. Rather, as he has done many times before, including during the suit in Colorado, defendant denies the validity of the order because (1) he was "overmedicated" during the negotiation and final settlement, and (2) the agreement was altered after he signed it. As the magistrate judge in the Colorado action noted, "While plaintiff now claims that he did not sign the Consent Decree that was filed in Pennsylvania, . . . and that he allegedly raised that claim before the Pennsylvania court, his remedy is either with the Pennsylvania court or an appellate court, rather than filing an action here on the same issues." Colo. Mag. Rep. & Rec. 7. The court, accepting the magistrate judge's recommendation to dismiss Ireland's suit, stated further, "The fact that Plaintiff's 'many efforts to correct the records have not been successful because of a lack of understanding about how one can achieve the action' provides no basis to allow Plaintiff to circumvent the Consent Decree and raise these issues in this Court." Colo. Op. 4-5. Clearly, the court in Colorado was under the impression that Ireland knew about this court's May 23, 2000. Since defendant has provided no evidence to the contrary, I must also conclude that defendant knew about the May 23, 2000 consent decree when he filed suit in Colorado,

thereby satisfying the second prong of the three-part test for a finding of civil contempt.

Finally, it is beyond doubt that the defendant violated he consent decree, which provides in pertinent part:

> Defendant[] Lewis Ireland . . . agree[s] to release and forever discharge Plaintiffs PMI, Harold Reeve . . . from any and all claims, liabilities, demands and causes of action known or unknown, fixed or contingent, which they may have or claim to have against Plaintiffs, PMI and Harold Reeve, Ph.D., arising from or relating to the subject matter of the Lawsuit. Defendant[] Lewis R. Ireland . . . further expressly acknowledge[s] that this settlement agreement and mutual release is intended to include in its effect, without limitation, all claims unknown or unsuspected to exist at the time of execution hereof, and that this settlement agreement and mutual release contemplates the extinguishment of any and all such claim or claims. This release is not intended to and does not release or waive any claims which are derived from events which occur after the date of this Agreement.

As the court in the District of Colorado noted, "Plaintiff agreed not to bring the very type of action against PMI and its representatives that is at issue in this lawsuit, and . . . the Consent Decree is a bar to this action." Colo. Op. 4. After reviewing both Ireland's complaint in the Colorado action and plaintiffs' complaint in the original action before this court, I agree with the court in the District of Colorado that the suit filed in that court is in violation of the May 23, 2000 consent decree.

Ireland has failed to show that there is a genuine issue of material fact that would preclude this court from granting plaintiffs' motion for summary judgment on liability for count I. Defendant has also neglected to raise any doubt as to whether plaintiffs are therefore entitled to judgment as a matter of law. Accordingly, I will grant plaintiffs' motion for summary judgment on liability for civil contempt.

II. Count II – Wrongful Use of Civil Proceedings

Plaintiffs allege that defendant's filing of the suit in the District of Colorado constitutes a wrongful use of civil proceedings under 42 PA. CONS. STAT. §§ 8351-54, also known as the "Dragonetti Act."[4] To recover under this statute, plaintiff must prove that: "(1) The underlying proceedings terminated in his or her favor; (2) The defendant caused those proceedings to be instituted without probable cause; and, (3) The proceedings were instituted for an improper purpose." *Hart v. O'Malley*, 781 A.2d 1211, 1219 (Pa. Super. Ct. 2001).

Because Ireland is currently *pro se* and was when he filed suit in the District of Colorado, I will consider issues that defendant did not raise himself in the instant suit. First, it is important to ensure that a claim for wrongful use of civil proceedings could be brought under Pennsylvania law based on a proceeding filed elsewhere. The Pennsylvania courts have made it clear that the proceeding at issue need not have been conducted in Pennsylvania for an individual to be liable under the Dragonetti Act. *See Werner v. Plater-Zyberk*, 799 A.2d 776, 786 -787 (Pa. Super. Ct. 2002) ("Neither the Dragonetti Act itself, nor subsequently decided case law concerning malicious prosecution or abuse of process, impose any restriction prohibiting an aggrieved party from seeking redress in Pennsylvania state court predicated on process served in, or 'civil proceedings' conducted in, a jurisdiction other than this Commonwealth."). So, the fact that the proceedings at issue were brought in the District Court of Colorado does not preclude liability for wrongful use of civil proceedings under 42 PA. CONS. STAT. § 8351.

Next, it is necessary to determine whether a claim for wrongful use of civil proceedings

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[4] Plaintiffs also allege in their complaint that defendant's attempt in this court to set aside the May 23, 2000 consent decree more two years after it was entered constitutes a wrongful use of civil proceedings under the Dragonetti Act. Compl ¶ 56-61. However, since plaintiffs did not address this claim in their motion for summary judgment on liability, I will not address it here.

could be brought against an individual who was *pro se* when he or she brought the relevant proceeding. The state courts in Pennsylvania and federal district courts in Pennsylvania have found individuals liable for wrongful use of civil proceeding and abuse of process even though they were *pro se* when they brought the proceedings at issue. *See Cilo v. Shields*, 33 Pa. D. & C.4th 10 (Pa. Com. Pl. 1996); *Lal v. Borough of Kennett Square*, 786 A.2d 1019 (Pa. Commw. Ct. 2001); *Toner v. Wilson*, 102 F.R.D. 275 (M.D. Pa. 1984); *Frempong-Atuahene v. City of Philadelphia*, 2000 WL 233216 (E.D. Pa. 2000); *Wexler v. Citibank*, 1994 WL 580191 (E.D. Pa. 1994). The actions of the defendants in these cases, however, are much more egregious than those of defendant Ireland in the instant case. For example, in *Shields*, defendant "acknowledged that he had no proof of the allegations in his complaint that [plaintiff] committed fraud and deception." *Cilo*, 33 Pa. D & C.4th at 13. In *Toner*, plaintiff, against whom sanctions were sought for abusing the discovery process in this particular case, had brought eleven suits over a three year period. *Toner*, 102 F.R.D. at 276. This court has consistently recognized that "courts traditionally have shown *pro se* litigants a leniency not extended to those with legal representation." *Wexler*, 1994 WL 58019, at *6 (citing *In re McDonald*, 489 U.S. 180, 184 (1989)). So, although defendant Ireland's *pro se* status does not preclude a finding of liability for wrongful use of civil proceedings, it will be taken into consideration when addressing plaintiffs' claims. More specifically, Ireland's actions will be viewed with some degree of leniency.

Regardless of this leniency, plaintiffs easily meet the first prong, that the proceedings at issue terminated in plaintiffs' favor, as the case Ireland filed in the District of Colorado against plaintiffs was dismissed for lack of jurisdiction and because the action was barred by this court's May 23, 2000 consent decree. Plaintiff does not challenge that the dismissal constitutes a

termination in plaintiffs' favor. The other two prongs are not as easily met, however.

Section 8352 of the Dragonetti Act explains that an individual "has probable cause for [initiating a proceeding] if he reasonably believes in the existence of the facts upon which the claim is based, and . . . [r]easonably believes that under those facts the claim may be valid under the existing or developing law . . . ." 42 PA. CONS. STAT. § 8352. Pennsylvania courts have made it clear that "probable cause is properly determined by the court when there are no material conflicts in the evidence." *Bannar v. Miller*, 701 A.2d 242, 248 (Pa. Super. Ct. 1997). In the instant case, there are no material conflicts in the evidence concerning the existence of probable cause; in the May 23, 2000 consent decree, Ireland agreed to release plaintiffs from all claims arising from the subject of the original lawsuit and then a year later Ireland filed suit in the District of Colorado for claims that were the subject of the original lawsuit in Pennsylvania. Even though I must show some leniency toward defendant because he was *pro se* when he filed suit in Colorado, the "reasonable belief" standard is an objective one. I conclude that it is not reasonable for a person who knowingly and voluntarily waived his right to pursue claims against some individuals to believe that he could then, one year later, file another suit against those same individuals on the same claims. Hence, plaintiffs meet the second prong of the three-part test for a finding of wrongful use of civil proceedings.

However, plaintiffs fail to meet the third prong of this test, that the proceedings were instituted for an improper purpose. As the Dragonetti Act itself states, "[T]he plaintiff has the burden of proving that [*inter alia*] . . . [t]he primary purpose for which the proceedings were brought was not that of securing the proper discovery, joinder of parties or adjudication of the claim on which the proceedings were based." 42 PA. CONS. STAT. § 8354. This court has

explained, "Even if a party lacked probable cause . . . in filing a suit, that party is not liable under the Dragonetti Act unless the suit also was filed for an improper purpose." *Beasley v. Hartman, Nugent, & Zamost*, 2002 WL 31478855, at *5 (E.D. Pa. 2002) (citing 42 PA. CONS. STAT. ANN. § 8351 (West 1998) and *Broadwater v. Sentner*, 725 A.2d 779, 784 (Pa. Super. Ct.1999)). Plaintiffs point out that it is not necessary to "present a 'confession' that defendant acted with an improper purpose," *Gentzler v. Atlee*, 660 A.2d 1378, 1385 (Pa. Super. Ct.1995), and rely instead on the oft-repeated holding that "improper purpose may be inferred from want of probable cause to maintain or continue the proceedings." *Buchleitner v. Perer*, 794 A.2d 366, 377 (Pa. Super. Ct. 2002). Although such an inference is permissible, it is not required.

Given defendant's *pro se* status when he filed suit in Colorado, it is entirely possible that a factfinder could conclude that even though defendant did not have a reasonable belief that he could bring the cause of action, defendant did not actually file suit for an improper purpose. Rather, a factfinder could believe that the "primary purpose for which the proceedings were brought *was* . . . adjudication of the claim on which the proceedings were based." 42 PA. CONS. STAT. § 8354 (emphasis added). A factfinder could conclude that defendant simply did not understand the consequences of the consent decree, and that this ignorance does not constitute an improper purpose. This would mean plaintiffs failed to meet the third prong of the three-part test for wrongful use of civil proceedings. Because this is a motion for summary judgment, I must interpret all inferences in the non-moving party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Since I find that a reasonable factfinder could infer from the facts that defendant did not act with an improper purpose, plaintiffs' motion for summary judgment on liability for wrongful use of civil proceedings must be denied.

III. Count III – Abuse of Process

"Abuse of process" is defined as "the use of legal process against another 'primarily to accomplish a purpose for which it is not designed.'" *Rosen v. American Bank of Rolla*, 627 A.2d 190, 192 (Pa. Super. Ct. 1993) (quoting RESTATEMENT (SECOND) OF TORTS, § 682). This tort, like wrongful use of civil proceedings, requires plaintiff to meet a three-part test. "[I]t must be shown that the defendant (1) used a legal process against the plaintiff, (2) primarily to accomplish a purpose for which the process was not designed; and (3) harm has been caused to the plaintiff." *Id*. Although plaintiffs claim in their complaint that Ireland should be liable for the tort of abuse of process, they do not spend much time or energy arguing that they are entitled to summary judgment on this claim. Instead, they define the tort and then simply state, "Plaintiffs submit that judgment is warranted, in their favor on the abuse of process claims as well." Pl. Mot. for Summ. J. 29-30. I disagree with plaintiffs' conclusory statement for two reasons. First, as discussed above, there is a genuine issue of material fact concerning whether or not defendant brought the suit in Colorado for an improper purpose, the second prong of the three-part test. Second, "[t]he Supreme Court of Pennsylvania, as well as lower appellate courts, have held that the abuse of process tort is inapplicable to the improper *initiation* of a civil proceeding." *Barakat v. Delaware County Memorial Hospital*, 1997 WL 381607, at *2 (E.D. Pa. 1997) (citing five Pennsylvania court cases in support of its conclusion). Plaintiffs do not allege, or produce any evidence, that defendant was responsible for a perversion of a process after it had issued. Their claim focuses on defendant's initiation of the suit in Colorado. This does not support a finding of liability for the tort of abuse of process under Pennsylvania law. Hence, plaintiffs' motion for summary judgment on liability for abuse of process is denied.

CONCLUSION

Plaintiffs' motion for summary judgment will be granted in part and denied in part. Ireland has failed to show that there is a genuine issue of fact concerning plaintiffs' claim for civil contempt against him. Hence, plaintiffs' motion for summary judgment on liability for this claim will be granted. In contrast, defendant has shown that (1) there is a genuine issue of material fact concerning plaintiffs' claim for wrongful use of civil proceedings, and (2) plaintiffs' are not entitled to judgment as a matter of law on their claim for abuse of process. For these reasons, plaintiffs' motion for summary judgment on these claims will be denied. An appropriate order follows.

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Plaintiffs,	:	
	:	CIVIL ACTION
v.	:	NO. 03-1712
	:	
LEWIS R. IRELAND et al.	:	
Defendants.	:	

ORDER

And now, this _____ day of December, 2003, upon consideration of plaintiffs Project Management Institute, Inc., Harold Reeve and Hugh Woodward's motion for partial summary judgment and brief in support thereof, defendant Ireland's response thereto and brief in support of his opposition, and Ireland's addendum to his response, it is hereby ORDERED that the plaintiffs' motion is GRANTED in part and DENIED in part. Judgment is ENTERED as to liability in favor of Project Management Institute, Inc., Reeve and Woodward on their claim against defendant Lewis R. Ireland on liability for civil contempt (count I). Summary judgment is DENIED on plaintiffs' claims for wrongful use of civil proceedings (count II) and abuse of process (count III).

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William H. Yohn, Jr., Judge